SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION

SBCA

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Federal Communications Commission
Office of Secretary

May 16, 1997

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: Commercial Availability of Navigation Devices, CS Docket No. 97-80

Dear Mr. Caton:

The Satellite Broadcasting and Communications Association (SBCA) respectfully submits the attached comments for consideration in the above-captioned proceeding. Please find enclosed an original and fifteen copies pursuant to the Commission's rules to be distributed to the appropriate parties.

Sincerely,

Andrew R. Paul
Senior Vice President

ARP/mh
Enclosures

225 Reinekers Lane • Suite 600
Alexandria, VA 22314
Voice: 703.549.6990 800.541.5981
Fax: 703.549.7640
e.mail: info@sbca.org
www.sbca.com

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Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 304 of the Telecommunications Act of 1996	)	CS Docket 97-80
	)	
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Commercial Availability of Navigation Devices	)	

COMMENTS OF THE

SATELLITE BROADCASTING AND

COMMUNICATIONS ASSOCIATION OF AMERICA

Andrew R. Paul
Senior Vice President
Satellite Broadcasting and
Communications Association
225 Reinekers Lane
Suite 600
Alexandria, VA 22314

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COMMENTS OF THE SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION OF AMERICA

I. Introduction

The Satellite Broadcasting and Communications Association of America (SBCA) is pleased to submit to the Commission its comments in the above referenced proceeding. The issues embodied in this Notice of Proposed Rulemaking are of great importance to the satellite service providers who offer national, private subscription service to U.S. consumers. We express our interest and concern to the Commission over certain aspects of this proceeding as they relate to the ability of Direct-To-Home (DTH) satellite services to provide secure video transmissions; the video distribution environment in which these

services operate; and the ability to increase their national subscriber base. In these comments, we raise the following issues:

- The DTH satellite industry meets the Commission's criteria for "fully competitive" and should be excluded from the requirements of Section 629.
- The Commission should take into account the importance of signal security to the survival of all MVPD's.
- The Commission should build into its rules as much flexibility as possible to account for marketplace conditions and competition.

Thus, we urge the Commission to analyze carefully the competitive position of the satellite industry in the existing video marketplace and the potentially far-reaching impact that certain of the proposals in this NPRM could have on DTH service providers.

The SBCA is the national trade association which represents the entire Direct-To-Home satellite industry. The Association's membership includes the principal satellite manufacturers and operators, the operating DBS companies which offer private subscription service to the public, the major program services which are available to DTH consumers as part of subscription packages in both C-Band and DBS services, the manufacturers and distributors of DTH receiving equipment, and the more than 2,500 satellite retail dealers who are the point of sale to consumers.

We point out initially that implementing the Congressional mandate of assuring consumers of the "commercial availability. . .of. . .equipment used. . .to

access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor"[1] raises highly complex issue which are different for each class of MVPD's. The appropriate application of the mandate will require the Commission to examine thoroughly the marketplace operations of video service providers in order to determine whether each class of MVPD fits, if at all, into the regulatory scheme contemplated by the mandate. We commend the Commission for recognizing some of the implicit circumstances surrounding the determination of a "fully competitive" market," and its willingness to consider flexible analysis of a marketplace based on the characteristics of delivery systems and the audiences they serve.

II. DTH Satellite Does Not Fit The Distribution Model Which The Commission Envisions For This Proceeding And Has No Need To Be Regulated By Section 629 Requirements.

The DTH satellite industry today meets the criteria of "fully competitive," by any measure, as does the commercial availability of the customer premises equipment (CPE) integral to each system. There are five competing DBS services nationwide[2], and the attendant CPE is fully portable and available from a wide range of outlets and manufacturers. So service platform and CPE selection is truly a matter of consumer choice as part of the operation of a genuinely free marketplace.

[1] Section 629 of the Telecommunications Act of 1996.
[2] The DBS providers are USSB, DIRECTV. Primestar, Echostar, and Alphastar.

The issue of availability of "navigation devices" as a matter of consumer choice must take into account the unique status of any video provider subject to this proceeding. The cable model lends itself more to being vulnerable to the type of regulation contemplated in this NPRM simply because of the diversity of cable operations and cable consumer hardware from one region to another. A consumer moving from one cable service area to another will also require the CPE which is proprietary to the cable operator in that region. But whether regulation in this area for any MVPD would enhance consumer welfare is questionable due to the large number of variables among MVPD's and within distribution systems themselves.

DTH satellite, and specifically Direct Broadcast Satellite services, are national, private subscription television services with fully portable CPE. DBS equipment is normally purchased by the subscriber, although it is also available as part of a service offering. But beyond that, the competitive aspects of the DBS marketplace are vastly different, as compared to other MVPD's.

In the first place, DTH is a national service by virtue of the ubiquitous footprint of the satellites carrying video programming. If "effective competition" were measured for DBS systems in accordance with the Commission's present rules governing cable systems, all satellite providers would already be considered "fully competitive." This marketplace condition exists even though

there are only 7.1 million subscribers to home satellite services which include 5 DBS providers and the C-Band service. DTH penetration represents slightly more than 7% of TV households.[3] Of these, approximately 4.8 million are DBS subscribers, equaling about 7% of total cable subscribers and 5% of TV households.

In addition to competing with cable operators, DBS systems also compete with each other for subscribers due to their national distribution characteristics. While not unusual for national suppliers of services to face intra-industry competition, the additional competitive presence of the cable industry as a wireline video distributor creates rampant competition for DBS providers in the video marketplace

Furthermore, the requirement of "commercial availability" does not have context in the DBS environment. All DBS equipment is competitively available from any number of sources and is fully portable regardless of geographic location. There are today five competing DBS systems, as well as approximately 17 packagers of programming in C-Band distribution.[4] It is self-evident that no issue exists with respect to the compatibility of the equipment in the distribution of each respective system's signals anywhere within the

[3] Data reported by SkyTRENDS, the economic and research data and reporting program of the DTH industry, sponsored by the SBCA and Media Business Corp. of Denver, CO.
[4] C-Band distributors and program packagers are accessible nationwide through satellite dealers acting as agents or 800-number administrative centers.

satellite's footprint. This is in contrast with the CPE which is proprietary to the cable operator operating within each service area.

We believe that the marketplace in which DTH operates is extremely competitive. Under these circumstances, we believe that DTH clearly meets the conditions set forth in this proceeding for "fully competitive" service, and that there is no need for the Commission to commence regulation of the satellite industry under Section 629, in view of unique features which govern DTH distribution.

III. Security And Theft Of Service Should Be The Overriding Concern Of The Commission In Making Determinations For All MVPD's Under Section 629.

Congress was clear to point out that, irrespective of the actions of the Commission in this area, the new rules should not "jeopardize security of. . .services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service." Congress recognized the importance of signal security to the operation of any video distribution service. It is the most critical component of building and preserving the subscriber base of a MVPD. This is particularly true of an entrepreneurial venture such as DBS where companies have made major investments in highly complex systems in order to compete against the more established cable industry.

As the Commission well knows, when DTH satellite consisted solely of the C-Band service, the rampant signal piracy which ensued following signal encryption in 1986, inflicted severe harm and seriously threatened the viability of satellite television. In fact, if the industry and the encryption provider, General Instrument, had not taken such decisive action when they did, there may not have been a DTH industry today. Programmers suffered significant erosion of their subscriber base, and by the time piracy was arrested in 1992, SBCA estimates that the number of "chipped" receiving units being employed by consumers in order to receive programming illegally comprised over 70% of all C-Band units in the field. That proportion would have been even higher if there had not been any control by the encryption supplier.

Further erosion and the possible demise of C-Band was averted through vigorous anti-theft measures taken jointly by the program services, coupled with a successful change-out to new decryption units in the field by General Instrument which supplied the original C-Band encryption technology. The new systems contained the next generation encoding technology which remains operational today. To the best of our knowledge it has not been compromised since its inception.

The success of this change-over however would not have been possible without the active intervention of the technology supplier in the consumer

marketplace working together with the program suppliers who also had to make changes in their uplinks in order to accommodate the new encryption system. In addition, by utilizing electronic countermeasures and information available through the subscriber access control center, the C-Band industry pre-empted signal piracy and preserved the viability of C-Band. Just as important, it maintained the integrity of utilizing satellites as a highly efficient means of delivering programming to consumers.

In this instance, it was the technical and financial ability of the sole, de facto encryption technology provider to intervene in the marketplace by directly replacing CPE on site that enabled an effective transition to the new technology. It also served as a valuable lesson for the future use of satellite home delivery – signal piracy is the greatest single threat to the maintenance of any viable and successful private subscription satellite service, and SBCA and its member companies remain extremely vigilant to any possible technical issues which could make encrypted satellite data streams vulnerable to compromise.

The success of national satellite services such as DBS are based on the revenue derived from the sale of program subscriptions to paying customers. Each new subscriber represents a net marginal increase in revenue to both the service provider and the programmer. The latter relies on the security of the encryption system to protect its existing viewer base and to further increase the viability of its business through the addition of new subscribers. Programmers

are confident that their signal, in which they have made significant investment for the acquisition of new and differentiating programming, will continue to be secure. At the same time, the revenue stream of certain DBS equipment suppliers is also affected by the success of the encryption technology in the field. They, too, are eager to ensure that the integrity of the video signal remains intact because of the financial ramifications resulting from encryption failure.

We believe that the C-Band experience, as unpleasant as it may have been at the time, in its own way provided significant guideposts concerning the deployment and control of satellite CPE, including receivers and encryption devices. The more control a satellite service provider has over the physical distribution of its video signal directly to a subscriber's television set, the more efficient the provider's ability to avert, or rectify if need be, compromise of the signal in distribution. We believe that the threat of signal theft is in direct proportion to the decentralization of the CPE components used in signal distribution. Thus, we urge the Commission to scrutinize diligently the matter of signal security, based on the real world experience of the DTH industry as well the other MVPD's.

IV. The Commission Should Act Very Cautiously With Regard To Rules Dealing With The Unbundling Of Equipment And Any Consideration Of Interface Standardization.

While we have already discussed our belief that Section 629 should not be applicable to DTH services because the satellite industry already meets the criteria of "fully competitive," some of the issues which the Commission has raised in this proceeding concerning security and theft of service are important enough to nonetheless warrant comment. The concept of unbundling, while possibly appearing attractive with regard to the application of Section 629, could have the potential of loss of signal distribution control which we discussed above. At issue is the integrity of CPE manufactured by third parties not affiliated with the service provider. Should, for example, an encrypted signal become "broken" through alteration of the third party CPE before that signal has been routed to the proprietary decryption equipment, the service provider could face grave difficulties in correcting the signal break. In this instance, such a manufacturer of CPE has little, if any, incentive to change the equipment. As a manufacturer, that company's interest would not be preservation of the encrypted data stream, but simply the sale at margin of a unit of equipment to consumers.

In other words, the inherent drawback of this approach is that while CPE containing tuner, power components, and electronic program guides (EPG) may have wide core commonalities, the conditional access features of each system are totally different in both a proprietary sense and as an important and highly

relevant security matter. In the DTH universe, bundling is a vital element in system success because of the need for control by the video distributor. System ownership by consumers of CPE licensed for manufacture by the service provider ensures the integrity of the signal and allows the provider to make near instantaneous response in the instance of a security break. This format also allows for the system portability which we discussed earlier. Consequently, SBCA does not believe that unbundling would serve well in an environment where signal security is the linchpin of video distribution.

By the same token, the Commission must consider very carefully whether it is appropriate to use this proceeding as a springboard to the vastly broader issue of standards and universal equipment compatibility. That appears to be clearly the direction this NPRM points to, and we would disagree sharply with the Commission if this proceeding became a forum for these larger issues.

The five operating DBS providers have invested considerable resources into the development of CPE which offers consumers the highest quality video and audio available among MVPD's in the marketplace. The proprietary aspects of each system insures providers signal integrity in accordance with the encryption technology each provider has selected and licensed. System integrity also allows each provider to distinguish itself technically and qualitatively from its cable competitors, but also serves to differentiate each DBS platform from one another – also an important competitive consideration in a

national marketplace. The end result is broader choice for consumers: they can choose between cable and DBS in the first instance. If they opt for the latter, they can further select among five DBS providers - each competing through program diversity, technical quality, and differentiation from one another.

We are also concerned by the Commission's allusion to the standardizing of interfaces together with the question of seamlessness of CPE compatibility among MVPD's. It should be evident that the DBS industry is performing well in letting the consumers and the marketplace decide on the merits of the technology each system provider offers. Each provider makes available to the public a national, private subscription service with the attendant benefits inherent in the technical format unique to each platform.

That uniqueness can take different forms, depending on system design. DBS providers, as well as the new C-Band receiving equipment (4DTV), all have enhanced content advisory features which add a highly sophisticated level of parental control and may be unique from system to system. DBS platforms also offer different EPG's; possible 2-way applications for the future; and at least one provider offers Internet service through adjunct CPE. All of these features help to establish DBS competitiveness. Interface standardization would only complicate rather than simplify the utilization of these different features and could even act as a hindrance to innovation. It could also entail possible new

costs in order to accommodate such technical system differences as polarity, power supply, and, in the case of C-Band, dish moving circuitry. The Commission should move with caution in this arena.

Finally, with regard to the issue of sunset of the proposed regulations, we reiterate our belief that the element of flexibility which the Commission is proposing in order to determine "the presence of competition and end regulation or decline to commence regulation"[5] can only benefit the marketplace which the Commission seeks to enhance. We commend the Commission for attempting to minimize regulation in this area and to seek sufficient flexibility so as to mold the rules to conform with the realities of each technology operating in the context of its marketplace. We trust that the Commission will recognize that the DTH industry, by virtue of both external (cable) and internal (DBS) competition, already meets the competitive criteria and so should not be subject to regulation.

V. Conclusion

Clearly, the DTH industry today meets all the criteria of being "fully competitive" within the framework established by the Commission in this proceeding, and there is no question as to the commercial availability of CPE inherent to each system's operation. Thus there is no need for the Commission to commence regulation of the DTH industry under Section 629. We have discussed how DBS providers compete not only with cable, but with each other

[5] NPRM, Paragraph 82.

on a national basis. We commend the Commission for its attempt to create flexibility in the application of its rules by taking into consideration the unique competitive aspects of DTH as that marketplace exists today. SBCA believes that the high degree of competitiveness can only increase as consumers become even more aware of the advantages of DTH television.

We urge significant caution, once again, with reference to the application of possible new CPE requirements in light of the extreme experience the C-Band service underwent with regard to signal theft. We would urge the Commission to attempt to analyze the impact of any new CPE requirements in the context of those rules so as not expose all MVPD's to further vulnerability to signal pirates and other individuals who seek new ways to acquire valuable subscription programming illegally.

Andrew R. Paul
Senior Vice President

Dated: May 16, 1997